

Date: 20111125
Docket: 10/64
Citation: *R. v. Connors*, 2011 NLCA 74

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
COURT OF APPEAL**

BETWEEN:

NEIL CONNORS

APPELLANT

AND:

HER MAJESTY THE QUEEN

RESPONDENT

Coram: Welsh, Mercer and White, JJ.A.

Court Appealed From: Supreme Court of Newfoundland & Labrador,
Trial Division (General) 200903T0225

Appeal Heard: November 15, 2011

Judgment Rendered: November 25, 2011

Reasons for Judgment by White J.A.

Concurred in by Welsh and Mercer, JJ.A.

Counsel for the Appellant: Self-Represented

Counsel for the Respondent: Vikas Khaladkar

White, J.A.:

[1] On November 17, 2009, after a lengthy trial in Provincial Court the Appellant, Neil Connors, was convicted of uttering threats to kill an animal contrary to section 264.1(1)(c) of the *Criminal Code*. The trial judge imposed a conditional discharge and one year of unsupervised probation.

[2] At trial Mr. Connors was represented by counsel. The Crown called three witnesses. They were the two complainants and the RCMP officer who investigated the complaint.

[3] Mr. Connors and the complainants were next door neighbors. The evidence of the complainants indicated issues relative to the number and activities of dogs on the complainants' property. The specific incidents leading to the charge occurred on February 7, 2007. The testimony of one of the complainants was that Mr. Connors said "if we didn't get rid of the dogs, he was going to" and that he "hates dogs and that he was going to kill our dogs if we didn't start cleaning up after them".

[4] The trial judge heard testimony from Mr. Connors acknowledging his issues regarding the dogs but denying any threats. The trial judge considered the testimony of all witnesses. He noted that the Crown's witnesses "gave their evidence in a very straightforward fashion ... without any embellishment whatsoever ...". In respect of the evidence of Mr. Connors, and after reviewing the sequence of events, he stated that "it is not logical that this matter happened in the manner described by Mr. Connors in his own testimony". After considering the evidence, the trial judge accepted the testimony of the Crown witnesses and rejected that of Mr. Connors. He was satisfied beyond a reasonable doubt that the incident occurred in the manner as described by the Crown's witnesses.

[5] Mr. Connors appealed the conviction to the summary conviction appeal court. The appeal was heard by a judge of the Supreme Court of Newfoundland and Labrador, Trial Division who, after hearing from Mr. Connors and the Crown, dismissed the appeal. He stated that he had reviewed the transcript and was not prepared to interfere with the trial judge's decision.

[6] The Supreme Court of Canada has stated that appeal courts ought to show deference to factual findings of a trial judge as stated in *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235 at para. 24:

... although the same high standard of deference applies to the entire range of factual determinations made by the trial judge, where a factual finding is grounded in an assessment of credibility of a witness, the overwhelming advantage of the trial judge in this area must be acknowledged. ...making a factual conclusion, of any kind, is inextricably linked with assigning weight to evidence, and thus attracts a deferential standard of review.

Applying that principle, the summary conviction appeal court judge determined it was appropriate to defer to the trial judge in respect of his findings of fact and credibility. (See also *R. v. Clark*, 2005 SCC 2, [2005] 1 S.C.R. 6 at para. 9.)

[7] Mr. Connors now appeals to this Court setting out in his Notice of Appeal:

The appeal is from conviction, the order and the sentence on the grounds that the appellant was falsely accused, falsely arrested, incompetently represented, maliciously prosecuted and wrongfully convicted.

The appellant asks for the following order or other relief, complete exoneration of all alleged wrongdoing and complete dismissal of all charges and/or conviction and sentence on the grounds of false arrest and incompetent representation.

[8] Section 839 of the *Criminal Code* governs the appeal to this Court. Two requirements must be established: leave of the Court must be obtained; and, the appeal is restricted to “any ground that involves a question of law alone”.

[9] The test to be applied by this Court in deciding whether or not to grant leave is set out in *R. v. Newfoundland Recycling Ltd.*, 2009 NLCA 28, 284 Nfld. & P.E.I.R. 153:

[9] Thus, to obtain leave to appeal pursuant to s. 839(1):

(a) the appeal must “be taken on a ground that involves a question of law alone”, and

(b) the ground(s) of appeal must be such that:

(i) either the ground of appeal has a “reasonable possibility of success”, or

(ii) “the proposed question of law [has significance] to the administration of justice”.

[10] At trial, Mr. Connors had a full opportunity to testify as to his version of events. His counsel conducted cross-examination of the Crown witnesses. While not all questions that Mr. Connors wanted asked were put to the witnesses, the evidence of the witnesses was, nevertheless, challenged by Mr. Connors' counsel.

[11] Trial strategy is the responsibility of legally trained counsel in consultation with a defendant, who always has the right to terminate his representation if dissatisfied.

[12] As to Mr. Connors' suggestion that there was collusion, it is not uncommon for friends, acquaintances and family members of complainants to testify, such evidence is given under oath, is subject to cross-examination and to assessment by the trial judge.

[13] There is no question of law alone before this Court. Even if there was a question of law alone there is nothing before this Court which would indicate a reasonable possibility of success of an appeal. The trial was fact based and the trial judge made findings of fact and credibility and determined that the offence had been proven beyond a reasonable doubt. The summary conviction appeal judge heard argument and assessed the transcript finding no basis on which to overturn the findings and decision of the trial judge.

[14] Further, as there is no question of law before the Court there can be no proposed question of law with significance to the administration of justice.

[15] Accordingly, leave to appeal is denied.

C.W. White, J.A.

I Concur: _____
B. G. Welsh, J.A.

I Concur: _____
K. J. Mercer, J.A.